

SU J. DOUGHERTY
Claimant

LOUISBURG CARE CENTER
Respondent

**KANSAS HEALTHCARE ASSOCIATION
WC INSURANCE TRUST**
Insurance Carrier

Claimant suffered accidental injury on or about January 19, 2004, when, while lifting a patient, she felt a pop in her knees. There was an accident report filed by claimant alleging that the pop occurred in both knees. However, the entirety of the treatment at that time was to claimant's right knee only. There is no indication in the medical records that claimant ever received or requested treatment for her left knee. Claimant underwent

several weeks of physical therapy and was returned to work by Eric Dyck, M.D., of Louisburg Family Care. She was also seen by Dr. Dyck's partner, Mark Sutherland, D.O., of Louisburg Family Care as well. Both examined and provided treatment for claimant's right knee only.

Claimant terminated her employment with respondent on approximately May 14, 2004. Claimant sought additional medical treatment in August 2004, returning to Louisburg Family Care with right knee complaints. The history provided indicated claimant had been having difficulties and had continued to have difficulties since January 2004. Claimant's history indicated that her knee was getting worse. She underwent an arthroscopy on September 29, 2004, under the care of Everett J. Wilkinson, Jr., D.O., of the Kansas Orthopedic Specialists. Again, there is no indication that claimant sought or obtained any treatment for her left knee.

Claimant did testify that while working for respondent, she overcompensated for the difficulties with her right knee by overusing her left leg. However, claimant's testimony is not supported by the total lack of medical care either sought or provided to the left lower extremity by any physician or health care provider.

In workers compensation litigation, it is the claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ The Board finds, contrary to claimant's allegations, there is no indication that claimant ever suffered any type of injury to her left lower extremity, nor did she ever seek or obtain any type of medical treatment to that extremity. Claimant's request for benefits in that regard is, therefore, denied.

With regard to the right lower extremity, respondent does not deny that claimant suffered accidental injury at that time but alleges that her current need for medical care stems from something other than her employment with respondent. That fact was utilized by the ALJ to deny claimant benefits. The ALJ's finding that claimant's current medical needs were not sufficiently proven to be connected to her work-related injuries formed the basis for the ALJ's denial of medical treatment to the right lower extremity.

K.S.A. 44-534a and K.S.A. 2004 Supp. 44-551 limit a Board's entitlement to review of issues on appeal from preliminary hearings. In this instance, respondent acknowledges claimant suffered accidental injury to her right lower extremity, with that injury arising out of and in the course of her employment. However, the ALJ did not deny claimant benefits based upon that determination, but rather denied claimant medical benefits, because claimant's current need for medical care was not connected to that injury. The only medical report in evidence in this record relating specifically to that issue is the January 25,

¹ K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508(g).

2005 IME report of Michael J. Poppa, D.O. In that report, Dr. Poppa states that claimant's right knee complaints and subsequent treatment were neither causally nor directly related to her work duties at Louisburg Care Center. He does go on to state that if claimant's personal history of the incident is valid and her right knee condition is treated under workers compensation, then the treatment plan being proposed would be appropriate.

After reviewing a multitude of medical reports and records, the Board finds that, while claimant did suffer accidental injury arising out of and in the course of her employment, this record does not support a finding that claimant's current need for medical treatment is associated with that injury. The Board, therefore, finds that the Preliminary Decision of the ALJ denying claimant benefits based upon this record should be affirmed.

As is always the case, preliminary hearings findings are not binding in a full hearing on the claim, but are, instead, subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated March 15, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2005.

BOARD MEMBER

c: Michael R. Lawless, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director